

Agency for International Development

§ 213.29

(4) The possibility that assets have been concealed or improperly transferred by the debtor;

(5) The availability of assets or income which may be realized by enforced collection proceedings; or

(6) The applicable exemptions available to the debtor under State and Federal law in determining the Government's ability to enforce collection.

(b) USAID may compromise a claim, or recommend acceptance of a compromise to DOJ, where there is significant doubt concerning the Government's ability to prove its case in court for the full amount of the claim, either because of the legal issues involved or a bona fide dispute as to the facts. The amount accepted in compromise in such cases will fairly reflect the probability of prevailing on the legal issues involved, considering fully the availability of witnesses and other evidentiary data required to support the Government's claim. In determining the litigative risks involved, USAID will give proportionate weight to the likely amount of court costs and attorney fees the Government may incur if it is unsuccessful in litigation.

(c) USAID may compromise a claim, or recommend acceptance of a compromise to DOJ, if the cost of collection does not justify the enforced collection of the full amount of the debt. The amount accepted in compromise in such cases may reflect an appropriate discount for the administrative and litigative costs of collection, taking into consideration the time it will take to effect collection. Costs of collection may be a substantial factor in the settlement of small claims, but normally will not carry great weight in the settlement of large claims. In determining whether the cost of collection justifies enforced collection of the full amount, USAID may consider the positive effect that enforced collection of the claim may have on the collection of other similar claims.

(d) To assess the merits of a compromise offer, USAID may obtain a current financial statement from the debtor, executed under penalty of perjury, showing the debtor's assets, liabilities, income and expense.

(e) Statutory penalties, forfeitures or debts established as an aid to enforce-

ment and to compel compliance may be compromised where the CFO determines that the Agency's enforcement policy, in terms of deterrence and securing compliance (both present and future), will be adequately served by accepting the offer.

§ 213.26 Payment of compromised claims.

The CFO normally will not approve a debtor's request to pay a compromised claim in installments. However, where the CFO determines that payment of a compromise by installments is necessary to effect collection, a debtor's request to pay in installments may be approved.

§ 213.27 Joint and several liability.

When two or more debtors are jointly and severally liable, collection action will not be withheld against one debtor until the other or others pay their proportionate share. The amount of a compromise with one debtor is not precedent in determining compromises from other debtors who have been determined to be jointly and severally liable on the claim.

§ 213.28 Execution of releases.

Upon receipt of full payment of a claim or the amount compromised, USAID will prepare and execute a release on behalf of the United States. In the event a mutual release is not executed when a debt is compromised, unless prohibited by law, the debtor is still deemed to have waived any and all claims and causes of action against USAID and its officials related to the transaction giving rise to the compromised debt.

Subpart E—Suspension or Termination of Collection Action

§ 213.29 Suspension—general.

The CFO may suspend or terminate the Agency's collection actions on a debt where the outstanding debt principal does not exceed \$100,000. Unless otherwise provided by DOJ delegations or procedures, the CFO refers requests for suspension of debts exceeding \$100,000 to the Commercial Litigation Branch, Civil Division, Department of

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Justice, for approval. If prior to referral to DOJ, USAID determines that a debt is plainly erroneous or clearly without legal merit, the agency may terminate collection activity regardless of the amount involved without obtaining DOJ concurrence. The CFO may waive the assessment of interest, penalty charges and administrative costs during the period of the suspension. Suspension will be for an established time period and generally will be reviewed at least every six months to ensure the continued propriety of the suspension.

§ 213.30 Standards for suspension.

(a) The CFO may suspend collection action on a debt when:

- (1) The debtor cannot be located;
- (2) The debtor's financial condition is expected to improve; or
- (3) The debtor has requested a waiver or review of the debt.

(b) Based on the current financial condition of the debtor, the CFO may suspend collection activity on a debt when the debtor's future prospects justify retention of the claim for periodic review, and:

- (1) The applicable statute of limitations has not expired; or
- (2) Future collection can be effected by offset, notwithstanding the 10-year statute of limitations for administrative offsets; or
- (3) The debtor agrees to pay interest on the debt and suspension is likely to enhance the debtor's ability to fully pay the principal amount of the debt with interest at a later date.

(c) The CFO will suspend collection activity during the time required for waiver consideration or administrative review prior to agency collection of a debt if the statute under which the request is sought prohibits USAID from collecting the debt during that time. The CFO will ordinarily suspend collection action during the pendency of his consideration of a waiver request or administrative review where statute and regulation preclude refund of amounts collected by the Agency should the debtor prevail.

(d) The CFO may suspend collection activities on debts of \$100,000 or less during the pendency of a permissive waiver or administrative review when

there is no statutory requirement where he determines that:

(1) There is a reasonable possibility that waiver will be granted and the debtor may be found not owing the debt (in whole or in part);

(2) The Government's interest is protected, if suspension is granted, by the reasonable assurance that the debt can be recovered if the debtor does not prevail; or

(3) Collection of the debt will cause undue hardship to the debtor.

(e) The CFO will decline to suspend collection where he determines that the request for waiver or administrative review is frivolous or was made primarily to delay collection.

§ 213.31 Termination—general.

The CFO may terminate collection actions including accrued interest, penalty and administrative costs, where the debt principal does not exceed \$100,000. If the debt exceeds \$100,000, USAID obtains the approval of DOJ in order to terminate further collection actions. Unless otherwise provided for by DOJ regulations or procedures, requests to terminate collection on debts in excess of \$100,000 are referred to the Commercial Litigation Branch, Civil Division, Department of Justice, for approval.

§ 213.32 Standards for termination.

A debt may be terminated where the CFO determines that:

(a) The Government cannot collect or enforce collection of any significant sum from the debtor, having due regard for available judicial remedies, the debtor's ability to pay, and the exemptions available to the debtor under State and Federal law;

(b) The debtor cannot be located, there is no security remaining to be liquidated, and the prospects of collecting by offset are too remote to justify retention of the claim;

(c) The cost of further collection action is likely to exceed the amount recoverable;

(d) The claim is determined to be legally without merit or enforcement of the debt is barred by any applicable statute of limitations;

(e) The evidence necessary to prove the claim cannot be produced or the